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Error to Circuit Court, Dickenson County.

Ejectment by A. J. Steinman against the Clinchfield Coal Corporation. There was a judgment for defendant, and plaintiff brings error. Affirmed.

*Irvine & Stuart*, of Big Stone Gap, for plaintiff in error.

*Fulton & Vicars* and *Bond & Bruce*, all of Wise, and *Morison*, *Morison & Robertson*, of Big Stone Gap, for defendant in error.

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MATNEY et al. v. YATES et al.

Sept. 20, 1917.

[93 S. E. 694.]

**1. Lost Instruments (§ 22\*)—Establishment—Pleading.**—Plaintiffs were properly denied relief upon the theory of a lost deed, where they merely alleged on information and belief that the deed was made, but admitted that they would be unable to prove the making and the loss thereof.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 478.]

**2. Equity (§ 429\*)—Vacation Decree—Amendment—Powers of Court.**—Code 1904, § 3293, giving the court control over all proceedings in the office during the preceding vacation, does not apply to vacation decrees entered pursuant to the provisions of § 3427, as to submission of causes in vacation.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 771; 8 Va.-W. Va. Enc. Dig. 517.]

**3. Equity (§ 442\*)—Vacation Decree—Bill of Review—Powers of Court.**—Where a motion is erroneously made for a rehearing of a vacation decree, the court may treat the petition as a bill of review, where it plainly seeks to correct an error of law apparent on the face of the record, such proceeding being appropriate for the correction of a final decree by the court wherein it was rendered.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 771; 8 Va.-W. Va. Enc. Dig. 530, 532.]

**4. Equity (§ 148 (1)\*)—Pleading—Multifariousness.**—Where a bill sought to perfect title either by establishment of a lost partition deed or by obtaining release deeds from all the heirs of one party, it was not multifarious, having but one general purpose.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 133.]

**5. Trusts (§ 371\*)—Establishment—Pleading—Sufficiency.**—A bill, alleging that complainants claim ownership of certain land as successors in title of the original owners, and have succeeded to possession which has continued ever since an oral partition sufficiently alleges

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the interest of the complainants in the land in a suit to establish trusteeship of defendant for them.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 372.]

**6. Frauds, Statute of (§ 74 (1)\*)—Purchase of Land—Creation of Agency.**—Where the claimants of land employed defendant to acquire releases so as to perfect their title, if the contract in its essence was one of agency, it created a trust relation, and was not within the statute of frauds, and could be established by parol, but if its effect was the purchase of real estate, the contract was within the statute.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 525.]

**7. Appeal and Error (§ 837 (4)\*)—Scope of Review.**—Where matter is admitted by demurrer, it must, on appeal, be regarded as a fact.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 538.]

**8. Trusts (§ 99\*)—Constructive Trusts.**—Where persons claiming to own land employed defendant to procure releases from other persons so as to perfect their title and he took the releases in his own name and refused to transfer them, he was a constructive trustee for them.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 297.]

**9. Equity (§§ 147, 263\*)—Pleading—Multifariousness—Surplusage.**—Where the court sustained demurrer and entertained an amendment which showed that plaintiffs were bound to fail in their proof on one branch of their case, it was error to dismiss for multifariousness, and the court should have overruled the second demurrer and treated as surplusage all allegations as to the first branch, or should have reserved the right to amend by striking out such allegations.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 144, 145; 11 Va.-W. Va. Enc. Dig. 222.]

**10. Equity (§ 429\*)—Vacation Decree—Amendment.**—Final decrees in vacation ought to guard against cutting off the opportunity for amendment.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 770, 771; 8 Va.-W. Va. Enc. Dig. 515.]

Appeal from Circuit Court, Buchanan County.

Bill by John H. Matney and another against Richard Yates and others. Decree sustaining demurrer of Yates to the bill, and complainants appeal. Reversed.

*Geo. W. St. Clair*, of Tazewell, and *J. H. Stinson*, of Grundy, for appellants.

*Chase & Daugherty*, of Grundy, for appellees.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.